

**Internal Revenue Service
Director, Exempt Organizations
Rulings and Agreements**

**Department of the Treasury
P.O. Box 2508 - Room 7008
Cincinnati, OH 45201**

Date: [REDACTED]

Employer Identification Number:
[REDACTED]

Person to Contact - I.D. Number:
[REDACTED]

Contact Telephone Numbers:

Phone
[REDACTED]

FAX
[REDACTED]

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure 1.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code. However, we have concluded that you do not qualify under another subsection.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a Trust, or Form 1120 if you are a corporation or an unincorporated association. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues." The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

[REDACTED]

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides, in part, that:

A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely,

[REDACTED]

Director, Exempt Organizations
Rulings and Agreements

Enclosures: 3

Enclosure I

Issue

Whether the substantial private benefit conferred by the organization to the founders causes the applicant to be operated for private interests and fail the operational test under Section 501(c)(3) of the Code.

Facts

The applicant was incorporated on [REDACTED] in the State of [REDACTED] "exclusively for charitable purposes". The management of the corporation is controlled by the members, [REDACTED] and [REDACTED].

Section 2.02 of the Bylaws indicates the term of office for the members shall be life. Section 3.03 indicates the members will elect the directors. The current board of directors are [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. All board members are parents or guardians of the residents.

An attachment to page 2 of Form 1023 indicates the applicant was formed to "provide a positive, safe, and clean environment for our son, [REDACTED] and others with similar debilitating traumatic brain injuries." The attachment further indicates that the organization was formed because the [REDACTED] could not find an acceptable or affordable home for their son, [REDACTED]. The second page of the attachment indicates that the [REDACTED] "are not financially able to personally underwrite all the services we would like and being approved for a 501(c)(3) would encourage friends and family to help us provide the type of facility we envision." The attachment also indicates the current home will accommodate up to [REDACTED] residents.

The organization has a lease with [REDACTED] and [REDACTED], the founders, for their facility. The actual rent of \$[REDACTED] was determined to be reasonable by a real estate agent and developer. No formal appraisal was submitted.

The facility will house a full time caretaker, [REDACTED], and the assistant caretaker will be [REDACTED].

Start up funds of \$[REDACTED] were provided by [REDACTED] and [REDACTED]. The organization will repay this debt at an interest rate of [REDACTED] % with payments of \$[REDACTED] per month.

[REDACTED]

An application for a state license to operate a long term care facility indicates the applicant will be "owned" [REDACTED] % by [REDACTED] and [REDACTED] % by [REDACTED].

A brochure submitted by the applicant indicates, in part, that the [REDACTED] "are very involved in everyday operation of the facilities and will be more involved when (they) retire (in) the summer of [REDACTED]." The brochure also indicates that the applicant was formed to find a home for the son of the founders, [REDACTED].

A letter dated [REDACTED] indicates the applicant was formed because the [REDACTED] "wanted to keep [REDACTED] near (them) so that he could continue to interact with his family." The letter also indicates that future grants received by the organization will "enhance our facility with a van for field trips and a greenhouse to provide a work setting."

A response dated [REDACTED] indicates the current residents are [REDACTED] [REDACTED] [REDACTED] and [REDACTED]. All residents are children of or cared for by a director. At the current time, the organization is licensed to accept only [REDACTED] residents, and the remaining spot is being held open in hopes of finding a female roommate for [REDACTED].

Law

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax organizations organized and operated exclusively for charitable, religious or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

In Wendy L. Parker Rehabilitation Foundation, Inc., Petitioner v. Internal Revenue, Respondent, Docket No. 855-85X, an organization was formed to aid the victims of coma, resulting from motor vehicle accidents, stroke, drowning, and other related causes.

The organization was formed by the Parker family to help with the care of their daughter, Wendy. The organization was denied exemption under section 501(c)(3) of the Code.

Wendy Parker is one of an unspecified number of recovering coma patients. She is the daughter of both the petitioner's President and the Secretary-Treasurer, and the sisters of petitioner's Vice President. George Parker, Phyllis Parker and Perry Parker, as officers and directors of a foundation formed to benefit coma patients, including Wendy Parker, have a personal interest in petitioner's affairs to provide assistance, including financial aid, to Wendy Parker and other coma patients. In addition, they are "private individuals" within the meaning of section 1.501(a)-1(c), Income Tax Regulations.

About 30% of the organization's disbursements were for the care of Wendy Parker. The distribution of funds for the benefit of Wendy Parker assists the Parker family in providing for her care. These funds will be used to pay for the medical and rehabilitative care of Wendy Parker. This relieves the Parker family of the economic burden of providing such care. Consequently, there is a prohibitive benefit from petitioner's funds that inures to the benefit of private individuals. See Founding Church of Scientology v. United States, 188 Ct.Cl. 490, 412 F.2d 1197 (1969), cert. denied 397 U.S. 1009 (1970) (payments made to family members of organization's founder); Charleston Chair Company v. United States, 203 F. Supp. 126 (E.D.S.C. 1962) (scholarship aid given to son of officer and director); Rueckwald Foundation, Inc. v. Commissioner, T.C. Memo. 1974-298 (payments made for nursing home and medical expenses of mother and college expenses of son of officer and director).

The petitioner's selection of Wendy Parker as a substantial beneficiary of its disbursements is the determinative factor in this case. Inurement of a benefit to "private individuals," whether monetary or not, as a result of contributions made to a purportedly exempt organization is proscribed. n4 See Lowry Hospital Association v. Commissioner, supra at 857 n. 8; People of God Community v. Commissioner, supra at 133; Horace Heidt Foundation v. United States, 145 Ct.Cl. 322, 170 F. Supp. 634, 638 (1959). The benefit to the Parker family is no less tangible because payment is directed not to be Parkers but to others for Wendy Parker's care.

In Revenue Ruling 67-367, 1967-2 CB 188 a nonprofit organization whose sole activity was the operation of a "scholarship" plan for making payments to pre-selected, specifically named individuals did not qualify for exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954. The scholarship agreements the organization paid to pre-selected, specifically named individuals designated by subscribers, caused the organization to serve private interests rather than public charitable and educational interests contemplated under section 501(c)(3) of the Code.

[REDACTED]

In Revenue Ruling 69-175, 1969-1 CB 149 a nonprofit organization, formed by parents of pupils attending a private school, provided school bus transportation for its members' children. The organization was held to serve a private rather than a public interest and did not qualify for exemption under section 501(c)(3) of the Code. The organization was formed by the parents of pupils attending a private school exempt from Federal income tax under section 501(c)(3) of the Code. All control over the organization rests in the parents. The organization provides bus transportation to and from the school for those children whose parents belong to the organization. When a group of individuals associate to provide a cooperative service for themselves, they are serving a private interest. By providing bus transportation for school children the organization enabled the participating parents to fulfill their individual responsibility of transporting their children to school. Thus, the organization served a private rather than public interest and was held not to be exempt from Federal income tax under section 501(c)(3) of the Code.

Application of Law

The file clearly indicates the applicant was formed primarily to house the son ([REDACTED]) of the founders ([REDACTED]). Because the founders were not financially able to personally underwrite all the services they wanted for their son they created the organization to provide a positive, safe, and clean environment for their son and others with similar debilitating traumatic brain injuries. While the applicant may assist other individuals, their presences in the group home helps the Popes support their son both financially and socially.

The founders are members for life and elect the board of directors. Therefore, control of the organization rests in the hands of the founders. Also, the founders provided the facility at a location nearby their residence for their convenience. The fact that the board of directors consists solely of individuals who have residents in the facility is also evidence of Private Inurement to the board members.

The provision of services to the son of the founders is clearly a substantial activity of the organization. Since more than an insubstantial part of its activities are not in furtherance of an exempt purpose the applicant is not operated exclusively for charitable, religious or educational purposes and is thus in non-compliance with Section 1.501(c)(3)-1(c)(1) of the Regulations.

Since the organization was created, in a substantial part, by the founders to benefit their son it is operated for the benefit of a designated individual and the persons who created it contrary to the requirements of Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations.

[REDACTED]

As in Wendy L. Parker Rehabilitation Foundation, Inc., Petitioner v. Internal Revenue, Respondent, Docket No. 855-85X the applicant was formed by a family to help with the care of their child.

The provision of care by your organization to a pre-selected individual ([REDACTED]) causes the organization to serve private interests as in Revenue Ruling 67-367, 1967-2 CB 188.

The provision of care by your organization to the children of the directors causes your organization to be similar to the organization in Revenue Ruling 69-175, 1969-1 CB 149 where a group of individuals associated to provide a cooperative service for themselves and were held to be serving a private not public interest.

Applicant's Position

In your responses dated [REDACTED] and [REDACTED] you have argued the following:

- 1) The founders "entered this venture because of a void in the health care industry in facilities that meet the needs of otherwise healthy adults in the age range of 20-60 who need help with daily living." You further state that "it would have been much easier to write a check for our son ([REDACTED]) than to have given our time, energy, and money to provide a positive environment for [REDACTED] and others."
- 2) You questioned the logic of opening a facility a great distance from your home. You further indicated how involved you are in the day to day operations of the facility and stated that "if we lived a great distance, we would be more like the absentee administrators who are trying to make a profit from a facility."
- 3) You indicated the financial commitment made by the founders to the organization and the fact the organization is now just "breaking even". You further indicated that "this venture is not for personal gain".
- 4) You state that your organization was created once the founders became aware of the limited choices for adults with traumatic brain injury. You further indicate that tax exempt status would enable your organization to expand beyond the current [REDACTED] residents and accept young men without adequate financial resources.

- 5) The proximity of the "Ranch" and the constant presence and personal involvement of the founders only adds to the case that the organization and facility serves the private interests of the founders and their son.
- 6) Clearly, your organization is similar to the organization in Wendy Parker. In Wendy Parker an organization, under the control of the founders, was formed by the Parker family to help with the care of their daughter, Wendy. While care was provided to other individuals, a substantial amount of care was provided to a select individual, Wendy Parker. Your organization was formed, by the founders and under their direct control, to help with the care of their son. While care is provided to the children of other board members, a substantial amount of care is provided to a select individual, [REDACTED].

Summary

Section 501(c)(3) expressly forbids the inurement of net earnings to the benefit of a private individual. Your organization was founded by the [REDACTED] for the primary reason of assisting them in the care of their son, [REDACTED]. The organization is located in a facility provided by the [REDACTED] at a convenient location for them. The additional residents in the facility (mostly related to the board members) help the [REDACTED] care for their son both financially and socially. The provision of care by the organization to the son of the founder, a pre-selected individual, causes the organization to serve private interests.

Therefore, it appears that you do not qualify for exemption under Section 501(c)(3) because you are operated for private interests and fail the operational test.

Form 6018
(Rev. Aug. 1983)

Department of the Treasury - Internal Revenue Service
Consent to Proposed Adverse Action
(All references are to the Internal Revenue Code)

Case Number

Date of Latest Determination Letter
N/A

Employer Identification Number

Date of Proposed Adverse Action Letter

Name and Address of Organization

I consent to the proposed adverse action relative to the above organization as shown below. I understand that if Section 7428, Declaratory Judgements Relating to Status and Classification of Organizations under Section 501(c)(3), etc. applies, I have the right to protest the proposed adverse action.

NATURE OF ADVERSE ACTION

☒ Denial of exemption

☐ Revocation of exemption, effective.

☐ Modification of exemption from section 501(c)() to section 501(c)(), effective

☐ Classification as a private foundation described in section 509(a), effective

☐ Classification as an private operating foundation described in sections 509(a) and 4942(j)(3), effective for

☐ Classification as an organization described in section 509(a)(), effective

☐ Classification as an organization described in section 170(b)(1)(A)(), effective

If you agree to the adverse action shown above, please sign and return this consent. You should keep a copy for your records.

If you sign this consent before you have exhausted your administrative appeal rights, you may lose your rights to a declaratory judgement under section 7428.

(Signature instructions on Back)

Name of Organization:

Signature and Title

Date

Signature and Title

Date